



October 4, 2022

SUBMITTED VIA ONLINE PORTAL

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960
Email: r4foia@epa.gov

***Re: Freedom of Information Act Request Regarding the Florida Department of
Environmental Protection***

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, Earthjustice seeks Environmental Protection Agency ("EPA") records pertaining to EPA grant funding applications by the Florida Department of Environmental Protection ("FDEP").

Earthjustice is requesting a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107. If EPA denies this request for a fee waiver or alternatively, a fee reduction, Earthjustice requests that you contact us before taking any action that will result in fees being assessed.

I. Documents Requested

We request:

- (1) All copies of Form SF-424 ("Application for Federal Assistance") submitted to EPA by FDEP and signed by both agencies, from January 1, 2021, to the present.
- (2) All copies of Form 4700-4 ("Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance") submitted to EPA by FDEP and signed by both agencies, from January 1, 2017, to the present.

If any of these requests cannot be fulfilled, please provide an explanation as to why. If any documents fulfilling this request can be provided before all responsive documents can be gathered, please provide whichever documents can be provided first as soon as they become available.

II. Fee Waiver Requested

Earthjustice is requesting a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), under which a fee waiver is warranted when disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” The purpose of Earthjustice’s FOIA request satisfies these requirements, addressed in turn below, and Earthjustice is therefore eligible for a fee waiver.

A. Requirement One: The Request is in The Public Interest Because It Is Likely to Contribute Significantly to Public Understanding of Operations and Activities of the Government.

To determine whether this first prong has been met, EPA regulations establish four factors to be considered: 1) the subject of the request; 2) the informative value of the information to be disclosed; 3) the contribution to an understanding of the subject by the public that is likely to result from the disclosure; and 4) the significance of the contribution to public understanding. 40 C.F.R. § 2.107(l)(2). Earthjustice satisfies each of these requirements, discussed in turn below:

1. *A Fee Waiver is Appropriate Because the Subject of the Requested Records Concerns the Operations or Activities of the Government.*

EPA regulations establish that this factor is satisfied where “[t]he subject of the requested records [] concern[s] identifiable operations or activities of the Federal government, with a connection that is direct and clear.” 40 C.F.R. § 2.107(l)(2)(i). Here, all of the records that Earthjustice has requested concern the civil rights assurance process to which recipients of federal funding must attest as part of the grant application process. As such, the connection between the subject of the requested records and the identifiable operations and activities of the Federal government is direct and clear.

2. *A Fee Waiver is Appropriate Because the Disclosure of Information is Likely to Contribute to an Understanding of Government Operations or Activities.*

Where the disclosure of information is “meaningfully informative about government operations or activities,” it is “‘likely to contribute’ to an increased public understanding of those operations or activities” and a fee waiver is appropriate. 40 C.F.R. § 2.107(l)(2)(ii). Here, the records Earthjustice seeks directly pertain to a federal agency’s grant application process. Disclosure of the requested records will be meaningfully informative about governmental operations and activities, namely the civil rights requirements that a funding recipient, FDEP, must comply with when making decisions that impact the environment and public health and safety.

3. *A Fee Waiver is Appropriate Because Disclosure Will Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject.*

EPA regulations establish that when disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester,” a fee waiver is appropriate. 40 C.F.R. § 2.107(l)(2)(iii). In addressing this factor, EPA will also “consider a requester’s expertise in the subject area and ability and intention to effectively convey information to the public.” *Id.* Here, there is a broad audience of persons interested in the subject, and Earthjustice has the requisite expertise necessary to convey the information to the public. Moreover, Earthjustice has the ability and intention to do so.

The fact that there is a reasonably broad audience of persons interested in the subject has been well documented by news media.¹ Earthjustice filed a civil rights complaint against FDEP with EPA’s External Civil Rights Compliance Office alleging discriminatory acts and practices, including FDEP’s permitting of Miami-Dade’s trash incinerator in the South Florida community of Doral, Florida.² For years, residents of Doral, Florida have been broadly opposed to waste incineration because of how directly it impacts them. They have held protests, spoken at public forums, and started a broad conversation on the impacts of waste incineration in Florida. These facts demonstrate the existence of a reasonably broad audience of persons interested in the subject; the disclosure of the requested records will contribute to the understanding that such interested persons have of the subject, as discussed in Part II.A.2 above.

Earthjustice has the expertise necessary to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will increase understanding of government actions affecting public resources in Southeast

¹ Will Peischel, *Is it time to stop burning our garbage?*, Bloomberg (May 23, 2022), <https://www.bloomberg.com/news/articles/2022-05-23/environmental-concerns-grow-over-incinerators-in-u-s-bj>; Alex Harris, *Who wants a new \$1 billion trash incinerator? Not Doral, where the old one stinks*, Miami Herald (Apr. 27, 2022), <https://www.miamiherald.com/news/local/environment/article260640767.html>; Alex Harris, *¿Qué municipio quiere un nuevo incinerador de basura?*, El Nuevo Herald (Apr. 27, 2022), <https://es-us.noticias.yahoo.com/municipio-incinerador-basura-153326533.html>; Telemundo 51, *Continúa debate sobre incinerador de basura en Doral*, NBC Universal Media, LLC. (Apr. 13, 2022), <https://www.telemundo51.com/noticias/local/continua-debate-sobre-incinerador-de-basura-en-doral/2287681/>; Telemundo 51, *Querella legal por incinerador de basura en Doral*, NBC Universal Media, LLC. (Apr. 5, 2022), <https://www.telemundo51.com/noticias/local/querella-legal-por-incinerador-de-basura-en-doral/2285217/>; Sean Reilly, *Fla. trash-to-energy plants spark civil rights complaint*, E&E News (Apr. 5, 2022), <https://subscriber.politicopro.com/article/eenews/2022/04/05/fla-trash-to-energy-plants-spark-civil-rights-complaint-00022815>; Ian Hodgson, *Burning trash ‘poisoning communities’ in Florida, complaint says*, Tampa Bay Times (Apr. 1, 2022), <https://www.tampabay.com/news/environment/2022/04/01/burning-trash-poisoning-communities-in-florida-complaint-says/>; Jenny Staletovich, *Environmental justice advocates say Florida violated neighbors’ civil rights in permitting Doral incinerator*, WLRN (Mar. 31, 2022), <https://www.wlrn.org/news/2022-03-31/environmental-justice-advocates-say-florida-violated-neighbors-civil-rights-in-permitting-doral-incinerator>.

² *Groups File U.S. Civil Rights Complaint Against Florida DEP Over Environmental Justice Issues* Earthjustice, (Mar. 31, 2022) <https://earthjustice.org/news/press/2022/groups-file-u-s-civil-rights-complaint-against-florida-dep-over-environmental-justice-issues>.

Florida. Earthjustice is a national organization that works with communities and partners around the country to protect people's health, to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change. Earthjustice has offices in Tallahassee, Florida and Miami, Florida. We work in partnership with Florida Rising to educate and advocate on behalf of communities impacted by waste incineration in Florida. Florida Rising is a people-powered organization made up of members advancing economic and racial justice across Florida. Moreover, one of the main focuses of Florida Rising is to create a regenerative future and a just transition that puts frontline communities at the center of energy policy, disaster response, food policy, and all climate change initiatives.

Earthjustice maintains a public website and a social media following on Facebook, with over 500,000 followers, and Twitter, with over 200,000 followers. Moreover, because Earthjustice participates in coalitions with other similar public interest organizations and is part of coalitions focusing specifically on environmental justice and on civil rights, Earthjustice has the ability to disseminate information to an even broader audience. Earthjustice intends to disseminate information from the requested records through various means and can convey the requested information on its website and social media, through partner organizations, through publicly available reports, and through media outreach initiatives. These types of public outreach are sufficient to warrant a fee waiver. *See Se. Legal Found., Inc. v. United States Env'tl. Prot. Div.*, 181 F. Supp. 3d 1063 (N.D. Ga. 2016) (finding that because the requested information was not "aimed at enlightening solely the individual requester" and the information might significantly contribute to public understanding of a government agency's operations, a fee waiver was appropriate); *S. Utah Wilderness All. v. U.S. Bureau of Land Mgmt.*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (citing *W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004)) (noting cases holding "statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver").

Because disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject, and because Earthjustice has the requisite expertise in the subject area, and the ability and intention to effectively convey information to the public, a fee waiver is appropriate.

4. *A Fee Waiver is Appropriate Because Disclosure Will Enhance Public Understanding of Government Operations or Activities to a Significant Extent.*

EPA regulations also require that the disclosure's contribution to public understanding be "significant." 40 C.F.R. § 2.107(l)(2)(iv). To satisfy this factor, "[t]he public's understanding of the subject in question, as compared to the level of public understanding prior to the disclosure, must be enhanced . . . to a significant extent." *Id.* EPA regulations prohibit the agency from making "value judgments" about the importance of the information; as long as public understanding will be significantly enhanced by disclosure, a fee waiver is appropriate. 40 C.F.R. § 2.107(l)(2)(iv).

As noted above, there is a significant public interest in the subject of the requested records. However, the public understanding of the subject is limited. Currently, there is minimal publicly available information on whether DEP activities comply with civil rights requirements applicable to DEP as a recipient of EPA grant funding. Therefore, information about any related threats to the health and safety of communities impacted by polluting facilities permitted by DEP is also lacking. Additionally, although some information is publicly available pertaining to the civil rights laws applicable to DEP as a recipient of federal funding, it is not at the level of specificity being sought in this request.

For the foregoing reasons, disclosure of the requested records will significantly enhance the public's understanding of the subject in question, as the records will provide information on civil rights laws applicable to DEP polluting facility permit actions. The disclosure will also significantly enhance the public's understanding of the environmental conditions in Florida and the effects that those conditions may have on nearby areas, as well as significantly enhancing the public's understanding of how governmental agencies make decisions about these issues. For the foregoing reasons, a fee waiver is appropriate.

B. Requirement Two: The Request is Not Primarily in the Commercial Interest of the Requester.

To determine whether this second prong has been met, EPA regulations establish two factors to be considered: 1) the existence and magnitude of a commercial interest disclosure; and 2) if there is a commercial interest in disclosure, whether the commercial interest or the public interest is the primary interest. 40 C.F.R. § 2.107(l)(2).

Earthjustice is a § 501(c)(3) nonprofit organization with no commercial interest in obtaining the requested information. Earthjustice is dedicated to preserve magnificent places and wildlife, to advance clean energy, and to combat climate change. Earthjustice's interests in disclosure are for the conveyance of information to the interested public and the furtherance of its organizational mission. Because Earthjustice has no commercial interest in the requested disclosure, the public will be the primary beneficiary of the requested information and therefore a fee waiver is appropriate. See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

Because there is no commercial interest in Earthjustice's request, it is not necessary to analyze the second factor of how the public interest weighs against the commercial interest. For all of the foregoing reasons, Earthjustice has demonstrated that it satisfies each of the factors to be considered in granting a fee waiver, and a fee waiver is therefore appropriate in this instance.

As provided by 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within 20 business days. Please send the requested records by email to nperez@earthjustice.org or acorrea@earthjustice.org, for records not available electronically, by regular mail to Nestor

Perez, Earthjustice, 4500 Biscayne Boulevard, Suite 201, Miami, FL 33137. If you find this request is unclear in any way, please do not hesitate to contact me by phone at 786-233-0274.

Sincerely,

s/ Nestor Perez
Associate Attorney
Earthjustice
4500 Biscayne Blvd., Ste 201
Miami, FL 33137
nperez@earthjustice.org